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NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

6 July 2009

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

***Re: Federal Communications Commission Comment
Regulation of Abusive Prison Pay Phone Industry***

Dear Ms. Dortch:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), we are writing to urge that the FCC require fair and reasonable rates on the widest possible range of prisoner-initiated telephone calls, whether local, in-state long distance, or interstate. This, the FCC has both the authority and the responsibility to do in the public interest. 47 U.S.C. § 276; *United States v. Southwestern Cable Co.*, 392 U.S. 157, 167-68 (1968) (FCC has jurisdiction and broad regulatory power over all forms of electrical communication.) Such reform will benefit all incarcerated persons and their families. Moreover, reform will assist their attorneys, many of whom are NACDL members.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's 12,000 members in 28 countries – including 90 state, provincial and local affiliate organizations totaling more than 40,000 attorneys – encompass private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges committed to preserving fairness and promoting a rational and humane criminal justice system.

Currently, there is pending before your agency a proceeding in which the regulation of prison pay phone providers is being considered. (CC Docket #06-128.) This proceeding concerns the egregious practices of the prison pay phone industry, which, with the complicity of correctional professionals, extort millions of dollars from prisoners, their families, and their attorneys on an annual basis. NACDL believes that federal regulation is long overdue.

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This state of affairs has grown out of an industry that competes for monopolies, not on the basis of customer service or the quality of its product, but on the percentage of revenue the phone company can promise correctional agencies. Prison telephone contracts grant exclusive rights to industry service providers in exchange for the payment of "commissions" as high as 60% of all revenue. Commissions are a key reason that telephone calls from prisoners can be financially ruinous for their families. And they can be cost-prohibitive for their legal counsel, thus interfering with constitutionally guaranteed rights to counsel and access to the courts.

Other unconscionable practices include:

- Extraordinarily high rates on "collect-only" calling policies (the most expensive means of placing a call) which predominate;
- "Service/set-up" fees (charged to customers setting up a required pre-pay account for the first time); "recharge fees" (billed when a customer reopens an account); "processing fees" – imposed either by a service provider or a third party business – for processing a customer's payment;
- The confiscation of sums remaining in an account after a specified period (3-6 months) of inactivity; and
- Costly "security measures" of dubious utility (such as "voice recognition software" and attenuated 3-way call detection that improperly but purposely disconnects calls to increase per-call costs and overall revenue.)

On October 29, 2008, a proposal was put forward that asked the FCC to: (1) establish a comprehensive, fair rate on both intra-state and inter-state prisoner calls; (2) ensure that the established rates cover legitimate costs and provide a reasonable rate of return so that economically viable service providers can continue to serve prisoners and their families; (3) require calling options that include collect, pre-paid, and debit calls; (4) eliminate "commissions;" (5) foreclose alternate means to unjustifiably inflate the cost of prisoner phone calls; and (6) defer to state public utilities commissions to address requested cost adjustments. *See* Hamden Ex Parte Proposal, CC #96-128 (October 29, 2008). This proposal is supported by many groups, including the American Bar Association, the National Legal Aid and Defender Association, and the Brennan Center for Justice. NACDL also endorses such an approach.

There is other momentum for reform. H.R. 1133 would end the payment of "commissions" and direct the FCC to ameliorate other aspects of the problem. And a consumer-initiated petition which seeks the intervention of President Obama has garnered 714 signatories as of the date of this letter. (*See* <http://www.thepetitionsite.com/3/lower-the-cost-of-calls-from-prison>.)

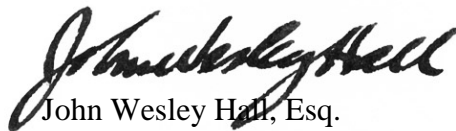
Whatever the specifics of the reform the FCC ultimately decides to enact, the fact remains that reform is crucial. And the payment of 60% "commissions" for the right to provide monopolistic phone services at a correctional facility or throughout an entire correctional system is an inherently abusive practice.

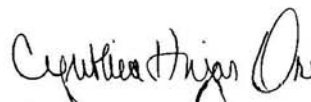
If you wish, NACDL will be happy to provide first-hand accounts that will demonstrate in stark terms the efforts of our membership to communicate by phone with imprisoned clients and the strain such calls place on budgets drawn on inadequate governmental funding for appointed counsel. In addition, NACDL members can describe the hardship these abusive practices have on the families of prisoners, particularly during this economic climate.

Thank you for your consideration in this matter and please contact us should you require any additional comment.

Sincerely,

Cynthia


John Wesley Hall, Esq.
President, NACDL


Cynthia Eva Hugar Orr, Esq.
President-Elect, NACDL

